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December 12, 2003

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Re: Serial No. 10/055,637  
Attorney's Docket No.: LAWR0021US

Sir:

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December 12, 2003



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

SIEGLER et al.

For: PEDESTRIAN TRAFFIC CONTROL DEVICE HAVING TAPE BELOW TOP  
OF POST

Serial No. 10/055,637

Filed: January 23, 2002

Examining Attorney: Ryan M. Flandro

Art Unit 3679

*Appeal*  
*#11*  
*Brief*  
*12/30/03*

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Sir:

BRIEF FOR APPELLANTS

Real Party in Interest

The real party in interest herein is Appellants' assignee, Lawrence Metal Products, Inc., a New York corporation, having a principal place of business at 260 Spur Dr. South, Bay Shore, NY 11706.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

Claims 1-8 are pending in this application. All claims stand rejected, and are appealed herein.

Status of Amendments

No amendment was filed subsequent to the final rejection.

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### Summary of Invention

This invention relates to pedestrian traffic control barriers commonly used by institutions serving the public, such as banks and airports. A typical use of such barriers is to organize people into lines as they wait for service by the next available teller, ticket agent, or the like.

Such traffic control barriers include a vertical post 20, 21 (Fig. 1), and a cassette 23, 24 mounted on the upper end of the post, the cassette incorporating a flexible tape 27 wound on a spool, the tape being extendible in a horizontal direction from the post. The tape is extended by pulling on its free end 28, causing the tape to unwind from a spool within the cassette against the force of a retractor spring tending to rotate the spool so as to rewind the tape. The free end 28 of the tape is attached to the upper end of another similar post.

This application is a continuation-in-part of Application Serial No. 09/335,572, filed June 18, 1999, now Patent No. 6,375,164, issued April 23, 2002. The issued patent covers, generally, a post carrying two cassettes, one 23 at the upper end of the post, and a second cassette 53 (Fig. 5) about midway between the upper and lower ends of the post. A second tape 32 (Fig. 1) can be drawn from the second cassette, between the two posts.

The invention covered by this application involves a post carrying a single cassette. Typically, in the case of a post having just one cassette, the cassette is mounted on the upper end of the post, which is usually about forty inches tall. However, under the Americans with Disability Act (ADA), the tape extending from the posts of pedestrian barriers of this type must be less than twenty seven inches from the floor. At this lower height, the tape can be detected by the visually impaired using a cane or guide dog.

It is undesirable, however, to make the posts this short (less than thirty inches tall) since at that height they are less noticeable by the general public, and hence are not as effective as a visual barrier. In addition, since signs are often mounted on top of at least some of the posts, it is important for the posts to be tall enough so that the signs they carry are readily observed without the need to crouch.

A pedestrian traffic control device which complies with the Americans with Disability Act is illustrated in Fig. 15. In this embodiment, two spaced-apart upright posts 120 and 121 are mounted on support bases 122. The posts may be slightly shorter than usual, say, thirty-six inches high. The posts are initially open at their upper ends, but in use are closed by caps 123 and 124 and do not accommodate cassettes similar to cassettes 23 and 24 within their upper ends.

A cassette (not shown), is carried within each post 120 and 121, each cassette being located below the top of its respective post.

At the location of the cassette, each post is provided with a slot, and tape 132 is shown extending from the cassette in post 120 to post 121. A pull 133 carried by the free end of tape 132 is used to secure the free end of the tape to the bracket of a cassette (not shown) mounted within post 121. A fragment of tape 134 is shown extending from the cassette in post 121 toward another post (not shown). Also, a fragment of a tape 135 is shown, this tape extending from the cassette of a previous post (not shown) in the series of posts, the pull 136 at the end of tape 135 securing the tape to post 120.

The cassettes are so arranged within the posts that the lower edges of tapes 132, 134, and 135 are located less than twenty seven inches above the floor supporting bases 122. If desired, a sign holder 190 may be mounted on the top of selected posts, e.g., post 120, the holder carrying a sign 191 giving pedestrians appropriate information such as "Enter Here".

The relationship between the cassette within each of posts 120 and 121 is similar to the relationship of the second, or lower cassette, to each of posts 20 and 21 (Fig. 1). Thus, a one-piece post 120 is formed with a slot, like the slot 47 (Fig.

3), the slot being between the ends of the post. The cassette is fabricated so as to have an external diameter along its entire length which is smaller than the internal diameter of the post permitting the cassette to be lowered into the interior of the post to a level so that the free end 37a (Fig. 6) of the tape carried by the cassette can be extracted through slot 47.

A tube 50 (Figs. 3 and 4) is dropped into post 20 before the lower cassette is inserted into the post to serve as a locating support for the lower cassette until the lower cassette can be permanently secured to the post.

After the free end 37a of the tape is pulled through slot 47, a pull 133 (Fig. 15), similar to pull 33 (Figs. 1 and 10), is attached to the free end of the tape. The pull serves as a finger grip for the end of the tape, and as a means for attaching the end of the tape 132 to a post spaced from the post from which the tape is extracted. In addition, since the width of pull 133 is larger than that of slot 47, the pull prevents the retractor spring of the cassette from retracting the tape completely into the post, and thereby maintains tension in the retractor spring.

#### **Issue**

All the claims have been rejected as anticipated by, or obvious in view of, Oster U.S. Patent No. 4,844,420. Oster

shows and describes a pedestrian traffic control device including a post having a wound-tape cassette mounted on the upper end of the post. Is Appellants' invention of providing a cassette within a one-piece post, the cassette being located between the ends of the post, anticipated by, or obvious in view of, Oster.

#### Grouping of Claims

The claims on appeal may be grouped as follows:

Claim 1, Claim 2, Claim 3, Claims 4 and 5, Claim 6, and Claims 7 and 8.

#### Argument

Claims 1, 2, 4, 5, 7, and 8 have been rejected under 35 USC 102 on the basis of the cited Oster patent. Oster shows a conventional pedestrian traffic control device comprising a hollow post 22 surmounted by a tape cassette 10. This is comparable to the hollow post 20 shown in Fig. 1 of the present application containing a cassette 23 at its upper end. There is not the slightest suggestion in Oster to locate a tape cassette within hollow post 22 at a point spaced from both the upper end and the lower end of the post.

The Examiner has attempted to overcome this obvious deficiency of Oster as a reference by considering Oster post 22 and cassette housing 12 as a "one piece post". This basis for

rejection is flawed because post 22 and housing 12 are obviously two separate pieces, and not one piece.

Furthermore, Oster cannot simply be reconstructed to make post 22 and housing 12 as one piece. This is not Oster's intention, since the point of his invention relates to interconnecting means 36 for joining a cassette 10 to a hollow post 22 or a solid post 22a. Moreover, housing 12 of cassette 10 cannot possibly be considered a part of post 22, because without housing 12, cassette 10 is no longer a viable unit. Specifically, housing 12 serves as a support for top cap 14 and base member 32, between which spool 30 is rotatably mounted. If housing 12 is separated from the remainder of the cassette, so as to become a permanent part of post 22, there is nothing left to hold top cap 14, base 32, and spool 30 together as a unit.

Oster recognizes throughout his patent that the cassette and post are two distinct items. In Column 1, lines 28-31, Oster states that:

An additional object is to provide a retractable crowd control barrier (i.e., cassette) which can be carried on any type of post member...

He accomplishes this goal by means of the adapter 36. At Column 2, lines 12 - 23, Oster says:



An adapter member 36 is for attaching the housing 12 [of the cassette] in a non-rotatably secured vertical position to a second stationary member [a post]. The adapter member 36 has a central threaded hole 50 extending upwardly from bottom thereof. The adapter member 36 is attached to bottom of the housing 12 with fasteners 46. In one instance the second stationary member is a hollow post member 22 which can be affixed thereto. In another instance the second stationary member is a solid post member 22a that has a threaded top portion 48 which can be threaded into the central threaded hole 50.

In contrast to the arrangement of Oster, the present invention, as shown in Fig. 15, involves a tape cassette located within a hollow post 120 at a point spaced from both the upper end and lower end of the post. More specifically, the present specification refers to post 120 as not being less than thirty inches tall (page 1, lines 18-19) and possibly as being about 36 inches high (page 15, line 6). Also, the bottom of tape 132 is described as being located less than 27 inches from the floor (page 16, lines 2-3). Thus, the lower edge of the tape is located at least several inches (in the case of a thirty inch post) from the upper end of the post. This location is significantly different from the typical arrangement, such as shown by Oster, wherein the tape extending from the cassette is located around the top of the post.

Claim 1 brings out the difference in structure, described above, between the present invention and the Oster device. Claim 1 calls for a hollow, upright, one piece, post having a slot (comparable to slot 47 in Fig. 3) spaced from both ends of the post. The post 22 of Oster has no such slot. In fact, post 22 has no slot in any location. Only the cassette 12 of Oster has a slot 24.

Claim 1 continues by calling for the post containing a tape cassette, the tape being extendible through the slot in the post, "the lower edge of the tape, when extended, being spaced from the upper end of the post at least several inches". Thus, the tape of the present invention is significantly spaced below the upper end of the post, unlike Oster, wherein the tape is located above the upper end of the post.

This is an important distinction for the reason set forth above. Whereas the Americans With Disability Act requires the tape to be less than 27 inches from the floor, it is undesirable to make the posts this short, since at that height they are less noticeable by the general public, and hence are not as effective as a visual barrier. In addition, since signs are often mounted on top of at least some of the posts, it is important for the posts to be tall enough so that the signs they carry are readily observed without the need to crouch.

Claims 2, 4, and 5 are all dependent upon claim 1, and therefore distinguish from Oster for the reasons set forth above. Moreover, each of these claims distinguishes from Oster in its own right. Claim 2 states that "the outer diameter of the cassette, along its entire axial length, is smaller than the internal diameter of the post" so that the cassette can be located between the ends of the post. The outer diameter of cassette 12 of Oster is larger than both the internal and external diameter of post 22.

Claims 4 and 5 define means for supporting the cassette within the post in the region of the slot. Obviously, Oster has no such means.

Claims 3 and 6 were rejected under 35 USC 103 as unpatentable over Oster. With respect to claim 3, the Examiner states that it would be obvious "to move the cassette of Oster from the upper end of the post to another position wherein the lower edge of the tape is less than 27 inches above the floor". In this, the Examiner is mistaken.

There is no suggestion in Oster that the cassette be moved to a position spaced beneath the upper edge of post 22. Furthermore, such a rearrangement of Oster is not even possible. Since the diameters of base member 32 and top cap 14 of Oster are larger than the internal diameter of post 22, these parts

will not fit within post 22. Moreover, such a suggestion for reconstructing Oster would violate the entire point of Oster's invention. Oster's intent is to provide an adaptor 36 making it possible to secure a tape cassette to the top of either a solid post 22a having a threaded stud projecting from its upper end, or a hollow post 22 into which the adaptor can be fit. To place Oster's cassette inside post 22, at a point between its ends, even if possible to do, would make the adapter 36 of Oster useless.

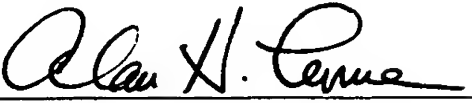
Claim 7 defines a method of assembling the cassette within the post. The claim calls for a hollow post having a slot between the post ends, "the lower edge of the slot being spaced from the upper end of the post at least several inches". Since, as set forth above, Oster does not suggest a slot in the post at a location as now described in claim 7, and cannot insert his cassette into the post to a point between the ends of the post, claim 7 patentably distinguishes from Oster.

Claim 8 is dependent upon claim 7 and therefore distinguishes from Oster for the reasons set forth above.

The patents cited, but not applied by the Examiner have been considered, but none comes any closer than Oster to the subject matter of the claims in this application.

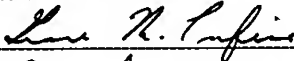
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STEPHEN L. SIEGLER et al.

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December 12, 2003

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APPENDIX

Ser. No. 10/055,637

1. A pedestrian traffic control device, comprising:

a hollow, upright, one piece, post having an open upper end and a lower end,

at least one slot in the post between its ends, the slot being spaced from both ends of the post,

a cassette located within the post and between its ends, the cassette incorporating a tape wound on a spool, the tape being extendible from the cassette, through the slot in the post, in a direction generally perpendicular to the axis of the post, the lower edge of the tape, when extended, being spaced from the upper end of the post at least several inches, and

means for holding the cassette within the post.

2. A pedestrian traffic control device as defined in claim 1, wherein the post and cassette are both generally circular in cross-section, and the outer diameter of the cassette, along its entire axial length, is smaller than the internal diameter of the post, so that the cassette can be inserted into the open upper end of the post and moved to its location between the ends of the post.

3. A pedestrian traffic control device as defined in Claim 1, wherein the cassette is held within the post at a position such that the lower edge of the tape, when extended, is less than twenty seven inches above the floor supporting the post.

4. A pedestrian traffic control device as defined in claim 1 including means for supporting the cassette within the post in the region of the slot in the post.

5. A pedestrian traffic control device as defined in claim 4 wherein the support means includes a tube within the post having an upper end in the region of the lower end of the slot in the post, the cassette being seated upon the upper end of the tube.

6. A pedestrian traffic control device as defined in Claim 1 wherein no tape-holding cassette occupies the upper end of the post.

7. A method of assembling a pedestrian traffic control device, the device including a hollow post having an open upper end and a slot between and spaced from the post ends, the lower edge of the slot being spaced from the upper end of the post at least several inches, and a cassette incorporating a spool on which a tape is completely wound, the free end of the tape being exposed, the method including the steps of:

inserting the cassette into the open end of the post,  
maneuvering the cassette along the length of the post  
until the free end of the tape is accessible through the slot in  
the post,

pulling the free end of the tape through the slot, and  
attaching a finger pull to the free end of the tape  
exposed outside the post, the pull being sized large enough so  
that the free end of the tape, with pull attached, cannot be  
retracted into the post through the slot.

8. A method as defined in claim 7 wherein the tape-  
carrying spool is spring based in a direction tending to wind  
the tape on the spool, so that pulling the free end of the tape  
through the post slot adds tension to the spring.